

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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USCA Docket Number:

USDC Docket Number : 03-cv-12565

Kipp R. Gibbs

v.

SLM Corp., et al

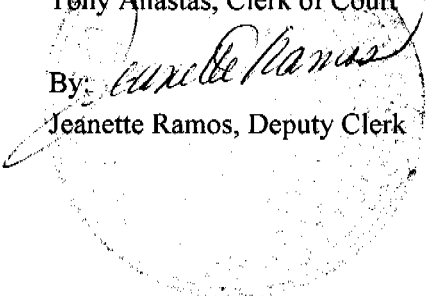
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**CLERK'S CERTIFICATE**

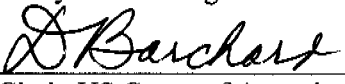
I, Tony Anastas, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 12/23/04.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on January 12, 2005.

Tony Anastas, Clerk of Court

By:   
Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 1/12/05

  
Deputy Clerk, US Court of Appeals

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Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

APPEAL

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:03-cv-12565-PBS**

|  |                                |
|--|--------------------------------|
| Gibbs v. SLM Corporation et al               | Date Filed: 12/19/2003         |
| Assigned to: Judge Patti B. Saris            | Jury Demand: None              |
| Referred to: Magistrate Judge Judith G. Dein | Nature of Suit: 371 Truth in   |
| Demand: \$200000000                          | Lending                        |
| Cause: 15:1601 Truth in Lending              | Jurisdiction: Federal Question |

**Plaintiff**

**Kipp R. Gibbs**

represented by **Kipp R. Gibbs**

P.O. Box 42  
Osterville, MA 02655  
508-292-2280  
PRO SE

V.

**Defendant**

**SLM Corporation**

represented by **Mathew Kane**

Donnelly, Conroy, And  
Gelhaar, LLP  
One Beacon Street  
33rd floor  
Boston, MA 02108  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Peter E. Gelhaar**  
Donnelly, Conroy & Gelhaar,  
LLP  
One Beacon Street

33rd Floor  
Boston, MA 02108  
617-720-2880  
Fax: 617-720-3554  
Email: peg@dcglaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant**

**Sallie Mae Servicing, L.P.** represented by **Mathew Kane**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Peter E. Gelhaar**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant**

**Nellie Mae** represented by **Mathew Kane**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Peter E. Gelhaar**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant**

**USA Funds** represented by **Mathew Kane**  
(See above for address)

*LEAD ATTORNEY  
ATTORNEY TO BE  
NOTICED*

**Peter E. Gelhaar**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE  
NOTICED*

**Defendant**

**General Revenue  
Corporation**

represented by **Mathew Kane**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE  
NOTICED*

**Peter E. Gelhaar**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE  
NOTICED*

| <b>Date<br/>Filed</b> | <b>#</b> | <b>Docket Text</b>   |
|-----------------------|----------|--|
| 12/19/2003            | <u>1</u> | NOTICE OF REMOVAL by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds from Barnstable Superior Court, case number 03-722. \$ 150, receipt number 52642, filed by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds.(Simeone, Maria) (Entered: 12/23/2003) |
| 12/19/2003            |          | If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Dein.   |

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|            |          | (Simeone, Maria) (Entered: 12/23/2003)   |
| 12/22/2003 | <u>2</u> | Stipulated MOTION for Extension of Time to 1/9/04 to File Answer re <u>1</u> Notice of Removal, by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P..(Simeone, Maria) (Entered: 12/29/2003)   |
| 12/23/2003 | <u>4</u> | AMENDED COMPLAINT against General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds , filed by Kipp R. Gibbs. (Attachments: # <u>1</u> Proof of service)(Simeone, Maria) (Entered: 01/06/2004)   |
| 12/29/2003 | <u>3</u> | NOTICE of Scheduling Conference Scheduling Conference set for 1/29/2004 04:00 PM in Courtroom 13 before Judge Patti B. Saris. (Simeone, Maria) (Entered: 12/30/2003)   |
| 12/30/2003 |          | Judge Patti B. Saris : Electronic ORDER entered granting <u>2</u> Motion for Extension of Time to Answer re <u>1</u> Notice of Removal, Sallie Mae Servicing, L.P.. (Simeone, Maria) (Entered: 12/30/2003)   |
| 01/05/2004 | <u>5</u> | AMENDED COMPLAINT against General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds , filed by Kipp R. Gibbs. (Attachments: # <u>1</u> Proof of service)(Simeone, Maria) (Entered: 01/07/2004)   |
| 01/06/2004 | <u>7</u> | Certified copies of STATE COURT Records and proceedings. (Simeone, Maria) (Entered: 01/12/2004)  |
| 01/07/2004 | <u>6</u> | STIPULATION re <u>5</u> Amended Complaint by General Revenue Corporation, Kipp R. Gibbs, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P. The Sallie Mae Defendants must provide a response to the amended complaint on or before 1/26/04. (Simeone, Maria) (Entered: 01/12/2004) |
| 01/09/2004 | <u>9</u> | Judge Patti B. Saris : ORDER entered ELECTRONIC  |

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|            |           | ENDORSEMENT re 6 Stipulation concerning the amended complaint, filed by Kipp R. Gibbs, SLM Corporation, Sallie Mae Servicing, L.P., Nellie Mae, General Revenue Corporation(Simeone, Maria) (Entered: 01/14/2004)  |
| 01/13/2004 | <u>8</u>  | US Marshal Process Receipt and Return for amended complaint. Sallie Mae, Sallie Mae Services served Delivered on 12/23/03 (Simeone, Maria) (Entered: 01/14/2004)   |
| 01/16/2004 | <u>10</u> | Proof OF SERVICE by Kipp R. Gibbs. General Revenue Corporation served on 12/12/2003, answer due 1/1/2004; SLM Corporation served on 12/12/2003, answer due 1/1/2004; Sallie Mae Servicing, L.P. served on 12/12/2003, answer due 1/1/2004; USA Funds served on 12/12/2003, answer due 1/1/2004. Acknowledgement filed by Kipp R. Gibbs. (Simeone, Maria) (Entered: 01/16/2004) |
| 01/22/2004 | <u>11</u> | US Marshal Process Receipt and Return for complaint. Peter Gelhaar served Delivered on 1/14/04 (Simeone, Maria) (Entered: 01/23/2004)  |
| 01/22/2004 | <u>12</u> | NOTICE of Joint proposed Discovery plan and case management report by General Revenue Corporation, Kipp R. Gibbs, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds (Simeone, Maria) (Entered: 01/26/2004)  |
| 01/22/2004 | <u>13</u> | CORPORATE DISCLOSURE STATEMENT by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds. (Simeone, Maria) (Entered: 01/26/2004)  |
| 01/22/2004 | <u>14</u> | NOTICE of Appearance by Peter E. Gelhaar, Mathew Kane on behalf of General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds (Simeone, Maria) (Entered: 01/26/2004)  |
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| 01/22/2004 | <u>15</u> | AFFIDAVIT by Kipp Gibbs in Opposition re <u>13</u> Corporate Disclosure Statement. (Simeone, Maria) (Entered: 01/26/2004)  |
| 01/26/2004 | <u>16</u> | MOTION to Dismiss the amended complaint by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds. (Simeone, Maria) (Entered: 01/28/2004)   |
| 01/26/2004 | <u>17</u> | MEMORANDUM in Support re <u>16</u> MOTION to Dismiss filed by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds. (Simeone, Maria) (Entered: 01/28/2004)  |
| 01/26/2004 | <u>18</u> | AFFIDAVIT of Matthew N. Kane. (Simeone, Maria) (Entered: 01/28/2004)   |
| 01/26/2004 | <u>19</u> | MOTION to Stay Discovery by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds.(Simeone, Maria) (Entered: 01/28/2004)   |
| 01/29/2004 |           | Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Scheduling Conference held on 1/29/2004. Court stays all discovery with the exception of Automatic Disclosures. Plaintiff to respond to Motion to Dismiss by 2/12/04. Scheduling Order to issue. (Court Reporter Marie Cloonan.) (Alba, Robert) (Entered: 01/29/2004) |
| 01/29/2004 | <u>20</u> | Judge Patti B. Saris : ORDER entered SCHEDULING ORDER: The court stays all discovery..(Simeone, Maria) Modified on 2/10/2004 (Simeone, Maria).previously docketed in the wrong case accidently (Entered: 02/10/2004)   |
| 02/12/2004 | <u>21</u> | Opposition re <u>16</u> MOTION to Dismiss filed by Kipp R. Gibbs. (Patch, Christine) (Entered: 02/18/2004)   |
| 02/17/2004 | <u>22</u> | MEMORANDUM in Support by Kipp R. Gibbs of <u>21</u> Opposition to to <u>16</u> Motion to Dismiss. (Patch,  |



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|            |     | Christine) (Entered: 02/18/2004)   |
| 02/23/2004 | ●23 | Judge Patti B. Saris: ORDER OF REFERENCE entered. Referring to Magistrate Judge Judith G. Dein <u>16</u> MOTION to Dismiss filed by SLM Corporation, Sallie Mae Servicing, L.P., Nellie Mae, USA Funds, General Revenue Corporation. (Alba, Robert) (Entered: 02/23/2004)  |
| 02/25/2004 | ●24 | NOTICE of Hearing on <u>16</u> MOTION to Dismiss: Motion Hearing set for 3/19/2004 10:00 AM in Courtroom 15 before Magistrate Judge Judith G. Dein. (Dambrosio, Jolyne) (Entered: 02/25/2004)  |
| 03/02/2004 | ●25 | MOTION for Leave to File Reply Brief by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds.(Patch, Christine) (Entered: 03/04/2004)   |
| 03/02/2004 | ●26 | MOTION for a Five-Day Postponement on Hearing on Defendants' Motion to Dismiss by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds.(Patch, Christine) (Entered: 03/04/2004)   |
| 03/02/2004 | ●27 | REPLY Brief in Further Support of <u>16</u> MOTION to Dismiss filed by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds. (Patch, Christine) (Entered: 03/08/2004)   |
| 03/05/2004 | ●   | Judge Judith G. Dein : Electronic ORDER entered granting <u>25</u> Motion for Leave to File Reply Brief. Counsel using the Electronic Case Files system should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. (Dambrosio, Jolyne) (Entered: 03/05/2004) |
| 03/05/2004 | ●   | Judge Judith G. Dein : Electronic ORDER entered granting <u>26</u> Motion to Continue Hearing. The Defendants' Motion to Dismiss will be heard on  |



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|            |     | 3/25/04 at 2:30 P.M. in Courtroom 15 on the 5th Floor. (Dambrosio, Jolyne) (Entered: 03/05/2004)  |
| 03/08/2004 | ●28 | Opposition re <u>26</u> MOTION to Continue Hearing on Defendants' Motion to Dismiss filed by Kipp R. Gibbs. (Patch, Christine) (Entered: 03/10/2004)  |
| 03/08/2004 | ●29 | Opposition by Kipp R. Gibbs to <u>27</u> Reply Brief. (Patch, Christine) Additional attachment(s) added on 3/17/2004 (Patch, Christine). (Entered: 03/10/2004)  |
| 03/16/2004 | ●30 | Affidavit of Kipp R. Gibbs re <u>29</u> Opposition to Reply Brief. (Patch, Christine) (Entered: 03/17/2004)   |
| 08/02/2004 | ●31 | Judge Judith G. Dein : ORDER entered REPORT AND RECOMMENDATIONS re <u>16</u> MOTION to Dismiss filed by SLM Corporation, Sallie Mae Servicing, L.P., Nellie Mae, USA Funds, General Revenue Corporation. Recommendation: that the motion be allowed. Objections to R&R due by 8/16/2004.(Dambrosio, Jolyne) (Entered: 08/02/2004) |
| 08/12/2004 | ●32 | OBJECTION to <u>31</u> Report and Recommendations filed by Kipp R. Gibbs. (Patch, Christine) (Entered: 08/23/2004)  |
| 08/12/2004 | ●33 | MOTION for Leave to File Amended Complaint by Kipp R. Gibbs.(Patch, Christine) (Entered: 08/23/2004)  |
| 08/20/2004 | ●34 | Opposition re <u>33</u> MOTION for Leave to File Amended Complaint filed by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds. (Patch, Christine) (Entered: 08/25/2004)   |
| 08/27/2004 | ●   | Judge Patti B. Saris : Electronic ORDER entered denying <u>33</u> Motion for Leave to File Amended Complaint. (Patch, Christine) (Entered: 08/30/2004)  |
| 09/08/2004 | ●   | Judge Patti B. Saris : Electronic ORDER entered ORDER ADOPTING REPORT AND   |

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|            |           | RECOMMENDATIONS for <u>31</u> Report and Recommendations re <u>16</u> Motion to Dismiss filed by SLM Corporation, Sallie Mae Servicing, L.P., Nellie Mae, USA Funds, General Revenue Corporation Action on motion: allowed. "After review of the objections, the Court adopts the Report and Recommendation. The court allows Plaintiff to amend Count III (negligence) and Count V (Breach of contract) within 20 days. The other counts are dismissed with prejudice."(Patch, Christine) (Entered: 09/09/2004) |
| 09/24/2004 | <u>35</u> | AMENDED Count IIIA: Negligent Reporting to Credit Bureaus against General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds , filed by Kipp R. Gibbs. (Attachments: # <u>1</u> Exhibit 19 & 20)(Patch, Christine) (Entered: 09/30/2004)  |
| 09/24/2004 | <u>36</u> | AMENDED Count V: Breach of Contract against General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds , filed by Kipp R. Gibbs.(Patch, Christine) (Entered: 09/30/2004)  |
| 10/14/2004 | <u>37</u> | MOTION to Dismiss Plaintiff's Amended Claims for Negligence (Count III) and Breach of Contract (Count V) by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds.(Patch, Christine) (Entered: 10/21/2004)   |
| 10/14/2004 | <u>38</u> | MEMORANDUM in Support re <u>37</u> MOTION to Dismiss Plaintiff's Amended Claims for Negligence (Count III) and Breach of Contract (Count V) filed by General Revenue Corporation, Nellie Mae, SLM Corporation, Sallie Mae Servicing, L.P., USA Funds. (Patch, Christine) (Entered: 10/21/2004)   |
| 10/25/2004 | <u>39</u> | Opposition re <u>37</u> MOTION to Dismiss filed by Kipp R. Gibbs. (Patch, Christine) (Entered: 11/01/2004)   |

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| 11/02/2004 | •   | Judge Patti B. Saris : ORDER entered ELECTRONIC ENDORSEMENT re <u>39</u> Opposition to Motion to Dismiss, filed by Kipp R. Gibbs. "I strike this opposition on the ground it does not address the issues. Any substantive opposition shall be filed in 10 days or the motion to dismiss will be granted." (Patch, Christine) (Entered: 11/03/2004)  |
| 11/30/2004 | •   | Judge Patti B. Saris : Electronic ORDER entered granting <u>37</u> Motion to Dismiss Plaintiff's Amended Claims for Negligence (Count III) and Breach of Contract (Count V). "Allowed without opposition." (Patch, Christine) (Entered: 12/06/2004)   |
| 11/30/2004 | •   | Civil Case Terminated. (Patch, Christine) (Entered: 12/06/2004)   |
| 12/23/2004 | •40 | NOTICE OF APPEAL as to Order on Motion to Dismiss by Kipp R. Gibbs. \$ 255, receipt number 60997 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 1/12/2005. (Patch, Christine) (Entered: 12/30/2004) |